

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SMITH & NEPHEW, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
vs.)	NO. 10-cv-10951-RWZ
)	
INTERLACE MEDICAL, INC., and)	
HOLOGIC, INC.)	
)	
Defendants-Counterclaimants.)	
)	

**INTERLACE’S EMERGENCY MOTION TO STRIKE PORTIONS OF
PLAINTIFF’S EXPERT REPORT REGARDING INFRINGEMENT**

Defendant, Interlace Medical, Inc. (“Interlace”), requests, on an emergency basis, that the Court strike the portions of Smith & Nephew’s Expert Report on Infringement relating to the “cutting member” and “drive member” limitations found in all asserted claims.

S&N’s expert report applies the very contentions that the Court struck in its August 31, 2011 order and ignores the amended contentions that S&N itself filed after the date of that order.

Interlace seeks emergency relief because of the impending November 7 deadline to serve its rebuttal expert report. Interlace should not be put to the useless exercise of rebutting an expert report that illegitimately relies on arguments that were already stricken for containing multiple, alternative theories that failed to apply the Court’s claim constructions. (Doc. No. 47.)

It would be difficult, costly, and extraordinarily inefficient to respond to arguments that have already been stricken. S&N’s report, which relies on multiple, alternative theories of infringement, undermines Interlace’s preparation of its defense as well as the prospect of an orderly and efficient adjudication of this dispute.

Interlace respectfully requests that this motion be decided on an emergency basis or, alternatively, that the current schedule be vacated until the issues raised in the present motion can be resolved.

Local Rule 7.1 Certification

Counsel for Interlace has conferred with counsel for Smith & Nephew in a good-faith effort to resolve or narrow the issues raised by this motion. Their discussion did not achieve this goal.

Dated: October 25, 2011

Interlace Medical, Inc.,

By its attorneys,

/s/ Jack C. Schechter

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CERTIFICATE OF SERVICE

I certify that this notice, filed through the ECF system, will be sent electronically on the above date to the registered participants as identified on the Notice of Electronic Filing.

/s/ Jack C. Schechter

Jack C. Schechter